

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**CORNELL UNIVERSITY, a nonprofit New
York corporation, and CORNELL RESEARCH
FOUNDATION, INC., a nonprofit New York
corporation,**

Plaintiffs,

-v-

01-CV-1974

**HEWLETT-PACKARD COMPANY, a
Delaware corporation,**

Defendant.

**HEWLETT-PACKARD COMPANY, a
Delaware corporation,**

Counterclaimant,

-v-

**CORNELL UNIVERSITY, a nonprofit New
York corporation, and CORNELL RESEARCH
FOUNDATION, INC., a nonprofit New York
corporation,**

Counterdefendants.

APPEARANCES:

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Hon. Randall R. Rader, Circuit Judge, United States Court of Appeals for the Federal Circuit, sitting by designation:

ORDER

Presently before the court is a motion for reconsideration of Cornell's second motion in limine and to preclude expert testimony by Dr. Flynn and limit Dr. Flynn's factual testimony to the Tjaden-Flynn article. This motion is denied.

During the Pretrial Conference on May 6, 2008, Hewlett-Packard committed to treating Dr. Flynn as a fact witness, not an expert witness. Counsel for Hewlett-Packard explained that

Dr. Flynn “is a fact witness. He will not be called as an expert. We will not refer to him as an expert. We will not seek to qualify him as an expert. He is just going to say here is what I did, here's the article I wrote.” Tr. at 216:6-11. Counsel went on to “guarantee” that Hewlett-Packard would only ask Dr. Flynn “fact questions.” Tr. at 217:4-5. In view of Hewlett-Packard’s commitment to treat Dr. Flynn as a fact witness and confine his testimony accordingly, Cornell’s motion is denied.

The court will, however, entertain objections to the scope of Dr. Flynn’s testimony during trial with an eye to confining Dr. Flynn to his proper role and knowledge as a fact witness.

It is therefore

ORDERED that Cornell University and Cornell Research Foundation’s motion, (Dkt. No. 979) is denied.

IT IS SO ORDERED.

May 14, 2008
Washington, District of Columbia

/s/ Randall R. Rader
Randall R. Rader
Circuit Judge